

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2022

Public Authority: Hampshire Constabulary
Address: Chief Constable of Hampshire Constabulary
Mottisfont Court
Tower Street
Winchester
SO23 8ZD

Decision (including any steps ordered)

1. The complainant has requested information from Hampshire Constabulary ("the Constabulary") regarding an incident being initially treated as a 'Hate Crime', before being changed to a 'Hate incident'. The Constabulary explained that the incident was recorded as a 'Hate Incident', providing the information that it held.
2. The Commissioner's decision is that, on the balance of probabilities, the Constabulary does not hold further recorded information in relation to the request. However, the Commissioner finds that the Constabulary did breach section 10(1) of FOIA as it did not comply with section 1(1) of FOIA, to provide a response within 20 working days.
3. The Commissioner does not require the Constabulary to take any steps as a result of this decision notice.

Request and response

4. On 25 November 2021, the complainant wrote to the Constabulary and requested information in the following terms:

"In regards to the "It's ok to be white" posters that appeared in Basingstoke recently, I'm seeking to understand under what provision or circumstances were Hampshire Constabulary able to treat the

matter initially as a Hate Crime and then as a Hate Incident (as reported by the BBC and other news outlets). Please consider this request as a request of information under the freedom of information act."

5. The complainant explained that they contacted the Constabulary again on 7 December 2021, as they had not had a response to their request.
6. The complainant contacted the Commissioner on 3 January 2022. The Commissioner then contacted the Constabulary on 24 January 2022, advising it that a response was required.
7. On 25 January 2022, the Constabulary contacted the Commissioner and explained that there had been an admin error but the case was now being dealt with as a priority.
8. The Constabulary responded on 23 February 2022. It provided a statement that had been provided to the media in relation to the incident, along with providing a link which explained the difference between a hate crime and a hate incident.
9. Following an internal review the Constabulary wrote to the complainant on 22 April 2022. The complainant had asked further questions in their internal review request, which the Constabulary attempted to answer, however, it also explained to the complainant that FOIA does not require them to create information; the Act only requires recorded information to be provided. In its response, it also explained that the Constabulary determined that the incident was a hate incident, and therefore was not investigated as a crime.

Scope of the case

10. The complainant contacted the Commissioner on 3 January 2022 to complain about the way their request for information had been handled.
11. The Commissioner considers that the scope of this case is to determine, whether, on the balance of probabilities, the Constabulary holds any further information within the scope of the request.

Reasons for decision

12. Section 1(1) of FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
13. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

The complainant's position

14. The Complainant has argued that they do not feel that all of their questions have been answered, specifically, if an investigation took place in relation to the incident. They say that this is a question that is simple to answer.
15. The complainant says that they contacted their local Council, who advised that "...the circumstances of this report have been investigated, and on the basis of evidence obtained by police, this has now been filed and recorded as a hate incident."
16. They advised that they consider there is a conflict within the responses, as the Constabulary advised it hadn't been investigated, but then the Council advised that it had been.
17. The complainant is also not satisfied at the time it took the Constabulary to respond to their request, yet it was able to respond to the Council within a matter of days.

The Constabulary's view

18. The Constabulary has explained that it was able to locate all information regarding the incident from their systems and then make a determination of what fell within the scope of the complainant's request.
19. The Constabulary also pointed out that the complainant wanted questions answered and it is aware of the ICO guidance in relation to this and, therefore, it looked for recorded information which would be regarded as in scope of the request, as this would then answer the questions.
20. The Constabulary explained in its internal review response that a determination was made that it needed to be recorded as a hate incident and, as such, it was not investigated as a crime.

21. During the Commissioner's investigation, he asked the Constabulary to clarify that it does not hold information which explains why the status was changed from a 'hate crime' to a 'hate incident'.
22. The Constabulary explained to the Commissioner that it never recorded the incident as a 'hate crime', it was always recorded as a 'hate incident.' However, they believe that some press outlets at the time incorrectly said it was a 'hate crime'.
23. The Constabulary also confirmed that the information it holds relates only to a 'hate incident'.

The Commissioner's view

24. The Commissioner asked the Constabulary a series of questions regarding the information that it holds in relation to the complainant's request.
25. From the information provided by the Constabulary, the Commissioner is satisfied that sufficient searches were carried out to determine if information within the scope of the request is held.
26. The Commissioner understands why the complainant believes that further information may be held in relation to their request and why they also not satisfied with the responses so far. However, the additional questions asked within the internal review are outside the scope of the original request. Should the complainant want these questions reviewing, they will need to make a further request to the Constabulary.
27. The Commissioner notes that the Constabulary has attempted to answer some of the questions that were submitted in the internal review. However, the focus of the Commissioner's investigation relates only to the original request for information. The Commissioner is satisfied that the original question was answered when the Constabulary provided the link which demonstrates the difference between a hate crime and a hate incident. The Constabulary also explained that it was recorded as a hate incident.
28. From the information that has been provided, the Commissioner's view is that the Constabulary does not hold any further information within the scope of the request.
29. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally,

he will consider any reason why it is inherently likely or unlikely that information is not held.

30. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

Section 10

31. Section 1(1) of FOIA states that: "Any person making a request for information to a public authority is entitled – (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and b) if that is the case, to have that information communicated to him."
32. Section 10 of FOIA states that: "...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
33. The complainant submitted their request for information to the Constabulary on 25 November 2021 and did not receive a response until 23 February 2022.
34. Therefore, the Constabulary failed to meet the 20 working day deadline and breached section 10(1) of FOIA.

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
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